

February 28, 2022

Via ECF

The Honorable Nina Gershon
United States District Judge
The Honorable Roanne L. Mann
United States Magistrate Judge
United States District Court
for the Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: Joint Status Report: *Suffolk County Water Authority v. The Dow Chemical Co. et al.*,
No. 2:17-cv-6980-NG-RLM, and *Related Cases*

Dear Judge Gershon and Judge Mann:

On behalf of all 32 Parties in the referenced cases, the Parties update below their progress regarding discovery items previously reported to the Court and regarding additional case updates.

I. Written Discovery

On December 13, Dow, Ferro, and Vulcan served objections to Plaintiffs' Requests for Admission regarding authenticity of the documents they produced. The parties are continuing to confer regarding mechanisms to establish document authenticity.

On January 26, Plaintiffs served the first set of interrogatories on Vulcan. Vulcan served responses and objections on February 25.

Dow and Vulcan have made supplemental document productions. SCWA has also supplemented document productions.

A. Defendants' Submission

Dow, Ferro, and Vulcan served interrogatories that asked each Plaintiff to identify, among other things, each well they contend is contaminated by each Defendant's products, and the facts they are aware of about the names, label language, and disposers of the products they contend are in each well. In response, Plaintiffs identified approximately 600 wells, but no products, no labels, no person or entity that disposed of a product, and no individual that witnessed such disposal. In a subsequent unverified meet and confer letter, Plaintiffs' counsel represented that "every well with dioxane contamination contains dioxane from products manufactured, distributed or sold by each Defendant," but identified no facts about the products, labels or releases upon which those claims are based.

While fact discovery continues, and the parties will continue to meet and confer on these issues, a Motion to Compel may be necessary to understand the basis for Plaintiffs' claims.

B. Plaintiffs' Submission

Plaintiffs disagree. Fact discovery is not complete and expert discovery has not begun, but even at this stage of discovery, Defendants' own documents and testimony confirm Plaintiffs' theory of liability: Defendants' products are the source of the dioxane present in each plaintiff's water supply. Plaintiffs will continue to meet and confer with defendants and narrow any issues if the parties cannot reach accord.

II. Party Depositions

Between November 2021 and February 2022, Plaintiffs have taken Rule 30(b)(6) depositions of Dow, Vulcan, and Ferro. Ferro's 30(b)(6) witness for its remaining topics is scheduled for March 10, which should conclude 30(b)(6) depositions for those defendants. Plaintiffs have and will continue to schedule additional fact witness depositions related to all Defendants.

Dow, Ferro, and Vulcan served a joint Rule 30(b)(6) notice on SCWA, and separately identified an initial group of 17 current and former SCWA employees that they intend to depose as fact witnesses. P&G and Shell also served a joint 30(b)(6) notice on SCWA. SCWA has designated five 30(b)(6) witnesses; some of those depositions have commenced, and others are scheduled for February and March, with additional fact witness depositions scheduled through April and May.

Recent 30(b)(6) depositions testimony have led the parties to discuss whether certain materials and documents identified during the depositions have been, or should be, produced. The parties are working to resolve these document issues as they arise, and without the Court's involvement. If they are unable to reach agreement, they will promptly raise the issues with the Court..

III. Third-Party Discovery

To date, the Parties have served over 100 document subpoenas or FOIA requests on third parties, which has resulted in the production of approximately 240,000 third-party documents. Discussion with some of these third parties over the production of materials is ongoing. The Parties will promptly file a Motion to Compel if they are unable to amicably resolve these issues.

In addition, on February 1, Plaintiffs deposed third-party Pride Solvents & Chemical Co., Inc., which is a distributor of chemical products on Long Island.

* * *

The parties are discussing broader discovery and case management topics to try to agree on whether certain of those topics need to be addressed, when and how best to address them, or at least better define the points of disagreement. The parties will report on the status of those

discussions no later than their currently scheduled May 31, 2022 status report, or, if they are unable to resolve them, raise them with the Court by Motion before then. The Parties will promptly bring to the Court any issues requiring earlier intervention following good faith conferral.

Respectfully submitted,

/s/ Joel Alan Blanchet

JOEL ALAN BLANCHET
jblanchet@phillipslytle.com
ANDREW P. DEVINE
adevine@phillipslytle.com
PHILLIPS LYTLE LLP
One Canalside
125 Main Street
Buffalo, NY 14203
(716) 847-7050

KEVIN T. VAN WART
kevinvanwart@kirkland.com
NADER R. BOULOS
nboulos@kirkland.com
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, IL 60654
(312) 862-2000
Attorneys for Defendant The Dow Chemical Company

ROBB W. PATRYK
robb.patryk@hugheshubbard.com
FARANAK SHARON TABATABAI
fara.tabatabai@hugheshubbard.com
HUGHES HUBBARD & REED LLP
One Battery Park Plaza
New York, NY 10004
(212) 837-6000
Attorneys for Defendant Ferro Corporation

STEPHEN C. DILLARD, *pro hac vice*
steve.dillard@nortonrosefulbright.com
NORTON ROSE FULBRIGHT US LLP
1301 McKinney, Suite 5100
Houston, Texas 77010
(713) 651-5151

FELICE B. GALANT

/s/ Katie H. Jones

KATIE H. JONES
katie@sheredling.com
MATTHEW K. EDLING
matt@sheredling.com
VICTOR M. SHER
vic@sheredling.com
STEPHANIE D. BIEHL
stephanie@sheredling.com
QUENTIN C. KARPILOW
quentin@sheredling.com
SHER EDLING LLP
100 Montgomery St. Suite 1410
San Francisco, CA 94104
(628) 231-2500
Attorneys for Plaintiffs¹

SCOTT MARTIN
smartin@hausfeld.com
HAUSFELD LLP
33 Whitehall St., 14th Floor
New York, NY 10004
(646) 357-1100

RICHARD S. LEWIS
rlewis@hausfeld.com
HAUSFELD LLP
1700 K Street, NW, Suite 650
Washington, DC 20006
(202) 540-7200

JAMES GOTZ
jgotz@hausfeld.com
HAUSFELD LLP
One Marina Park Drive, Suite 1410
Boston, MA 02210
(617) 207-0600

KATIE R. BERAN
kberan@hausfeld.com

¹ The Sher Edling firm represents all Plaintiffs in these related cases except Plaintiffs New York American Water (19-cv-2150) and Hicksville Water District (19-cv-5632).

felice.galant@nortonrosefulbright.com
NORTON ROSE FULBRIGHT US LLP
1301 Avenue of the Americas
New York, NY 10019
(212) 318-3000
Attorneys for Defendant Legacy Vulcan, LLC
(formerly known as Vulcan Materials
Company)

MEGAN R. BRILLAULT
mbrillault@bdlaw.com
DANIEL M. KRAININ
dkrainin@bdlaw.com
PAULA J. SCHAUWECKER
pschauwecker@bdlaw.com
BEVERIDGE & DIAMOND P.C.
477 Madison Avenue
15th Floor
New York, NY 10022
212-702-5400
Attorneys for Defendant Shell Oil Company

DAVID J. LENDER
david.lender@weil.com
JED PAUL WINER
jed.winer@weil.com
WEIL, GOTSHAL & MANGES, LLP
767 Fifth Avenue
New York, NY 10153
212-310-8000

DIANE P. SULLIVAN
diane.sullivan@weil.com
WEIL GOTSHAL & MANGES LLP
17 Hulfish Street, Suite 201
Princeton, NJ 08542
609-986-1120
Attorneys for Defendant The Procter & Gamble Company

HAUSFELD LLP
325 Chestnut Street, Suite 900
Philadelphia, PA 19106
(215) 985-3270
Attorneys for Plaintiff Suffolk County
Water Authority

FRANK R. SCHIRIPA
fschiripa@hrsclaw.com
MICHAEL A. ROSE
mr@hachroselaw.com
HILLARY M. NAPPI
hnappi@hrsclaw.com
HACH ROSE SCHIRIPA & CHEVERIE, LLP
112 Madison Avenue - 10th Floor
New York, New York 10016
(212) 213-8311

J. NIXON DANIEL, III
jnd@beggsllane.com
MARY JANE BASS
mjb@beggsllane.com
BEGGS & LANE, RLLP
501 Commendancia Street
Pensacola, FL 32502
850-469-3306

T. ROE FRAZER, II
roe@frazer.law
THOMAS ROE FRAZER, III
trey@frazer.law
FRAZER PLC
30 Burton Hills Blvd., Suite 450
Nashville, TN 37215
615-647-0987
Attorneys for Plaintiff New York American
Water Company, Inc.

Paul J. Napoli
pnapoli@nsprlaw.com
Lilia Factor
lfactor@napolilaw.com
NAPOLI SHKOLNIK PLLC
360 Lexington Avenue, 11th Floor
New York, NY 10017
(212) 397-1000
Attorneys for Plaintiff Hicksville Water
District

cc: All Counsel of Record (by ECF)